APPENDIX A

T.C.A. 27-8-101. Constitutional basis. — The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure. [Code 1858, § 3123 (deriv. Const. 1834, art. 6, § 10); Shan., §4853; Code 1932, § 8989; T.C.A. (orig. ed.), § 27-801; Acts 1981, ch. 449, § 2.]

T.C.A. 27-8-102. Cases in which writ lies. — Certiorari lies:

(1) On suggestion of diminution;

(2) Where no appeal is given;

(3) As a substitute for appeal;

(4) Instead of audita querela; or

(5) Instead of writ of error.

This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure. [Code 1858, § 3124; Shan., § 4854; Code 1932, § 8990; T.C.A. (orig. ed.), § 27-802; Acts 1981, ch. 449, § 2.]

T.C.A. 27-9-101. Right of review. — Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have said order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter. [Code 1932, § 9008; modified; T.C.A. (orig. ed.), § 27-901.]

T.C.A. 27-9-106. Supersedeas. — (a) If the order or judgment rendered by such board or commission made the basis of

the petition for certiorari shall make any material change in the status of any matter determined therein, the petitioner may, upon reasonable notice to the board or commission and other material defendants, apply to the chancellor, at the time of filing the said petition, for a supersedeas, and the chancellor, in his discretion, may grant a writ of supersedeas to stay the putting into effect of said order or judgment or any part thereof.

(b) No such supersedeas shall be granted until a good and sufficient bond, in an amount to be fixed and approved by the chancellor, shall have been given by the petitioner, conditioned to indemnify the defendants named in the petition from any injury that may result by reason of the granting of said supersedeas. [Code 1932, § 9017; T.C.A. (orig. ed.), § 27-906.]

T.C.A. 27-9-107. Notice of filing to defendants. — Upon the filing of said petition the clerk of the court of pendency shall immediately send, by registered return-receipt mail, to the board or commission a notice of the filing of said petition and a certified copy thereof. The clerk shall also send a similar notice to the last known post office address of each other party named as defendant. [Code 1932, § 9010; T.C.A. (orig. ed.), § 27-907.]

T.C.A. 27-9-109. Transcript of proceedings. — (a) Immediately upon the grant of a writ, the board or commission shall cause to be made, certified and forwarded to said court a complete transcript of the proceedings in said cause, containing also all the proof submitted before the board or commission.

(b) The Clerk of said court shall promptly, by registered return-receipt mail, notify each party named as defendant in said petition of the filing of such transcript. [Code 1932, § 9012; T.C.A. (orig. ed.), § 27-909.]

T.C.A. 27-9-110. Defensive pleadings — Amendments. — (a) All defendants named in said petition, desiring to make defense, shall do so by answer (in which grounds of demurrer

shall be incorporated) to said petition within thirty (30) days from the date of the filing of the transcript, unless the time be extended by the court.

(b) Any other person who may be affected by the decision to be made by said court may, upon leave given, intervene and file such an answer in the cause.

(c) Amendments may be granted as in chancery procedure. [Code 1932, § 9013; T.C.A. (orig. ed.), § 27-910.]

T.C.A. 27-9-111. Hearing - Findings. — (a) At the expiration of ninety (90) days from the filing of the transcript, the cause shall stand for trial, and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county or municipal revenue.

(b) The hearing shall be on the proof introduced before the board or commission contained in the transcript, and upon such other evidence as either party may desire to introduce.

(c) The party shall reduce all findings of fact and conclusions of law to writing and make them parts of the record.

(d) In making such findings of fact, the judge shall weigh the evidence and determine the facts by the preponderance of the proof. [Code 1932, § 9014; Acts 1951, ch. 261, § 1; T.C.A. (orig. ed.), § 27-911; Acts 1987, ch. 28, §§ 1-3.]

RULE 10. EXTRAORDINARY APPEAL BY PERMISSION ON ORIGINAL APPLICATION IN THE APPELLATE COURT

(a) Original Application for Extraordinary Appeal; Grounds. An extraordinary appeal may be sought on application and in the discretion of the appellate court alone of interlocutory orders of a lower court from which an appeal lies to the Supreme Court, Court of Appeals or Court of Criminal Appeals:

(1) if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal as otherwise provided in these rules. The appellate court may issue whatever order is necessary to implement review under this rule.

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Advisory Commission Comment

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This rule abandons old terminology associated with the writ system of interlocutory review in order to avoid irrelevant historical considerations associated with the writs. Subdivision (a) expressly empowers the appellate court to issue whatever order is necessary to implement review, and rule 36 permits the court to grant whatever relief is appropriate.

This rule, like rule 9, is available to both the defendant and the state in criminal actions.